IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 09/07/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice M. THANIKACHALAM

W.P. Nos.20553 OF 2000
AND
W.P. No.18729 OF 1999

W.P. No.20553 OF 2000:

V. Ravishankar ..... Petitioner

-Vs-

1. Union of India, rep. by
Sr. D.S.T.E. Microwave/
Construction, Madras-3

2. The Chief Personnel Officer
Southern Railway
Madras □ 3

3. The Central Administrative Tribunal
Madras Bench, rep. by its Registrar
Madras 600 104 ..... Respondents

W.P. No.18729 OF 1999:

1. Union of India, rep. by
i) District Signal and Tele-
Communication Engineer
Microwave/Construction
Moore Pavillion
Chennai 3
ii) Chief Personnel Officer
Southern Railway
Chennai 600 003 :: Petitioners

:versus:
1. V. Ravishankar

2. Central Administrative Tribunal
Madras Bench, rep. by its

Registrar, Chennai 600 104 :: Respondents

Petitions praying for Writs of Certiorari as stated
in the writ petitions

For Petitioners :: Mrs. Rita Chandrasekaran

For Respondents :: Mr. V. Radhakrishnan
(Railway Administration)

:ORDER
(Passed by the Hon□ble Mr. Justice V.S. SIRPURKAR, J.)
This judgment shall dispose of two writ petitions they being, W.P. No.20553 of 2000, filed by one V. Ravishankar and W.P. No.18725 of 1 999, filed by the Railway Administration. While the first writ petition emanates out of the common order passed by the Central Administrative Tribunal (in short □the Tribunal□) in O.A. No.483 of 1997, the second writ petition emanates out of the order passed in O.A. No.1103 of 1996. For understanding the controversy involved, the following facts will be necessary. We will refer to the parties by their respective position in W.P. No.20553 of 2000.

2. Petitioner, V.Ravishankar, in W.P. No.20553 of 2000 was appointed as Project Casual Labour (Wiremen Grade II) in Railway Service and because of his continuously working as Wiremen Grade-II, he was granted temporary status as Wiremen Grade-II, by order dated 24-11-1986, with effect from 1-1-1984. He was, thereafter, temporarily promoted to the post of Wiremen Grade-I by order dated 18-1-1990. The scale of pay applicable to the post of Wiremen Grade-II then was Rs.210-290, which was later on revised to Rs.800-1150. When the petitioner was promoted to the post of Wiremen Grade-I, he was granted the pay in the scale of pay of Rs.950-1500.

3. The petitioner, however, approached the Tribunal by way of O.A. No.1103 of 1996, claiming the pay in the scale of pay of Rs.1320-2040 which, according to him, was the scale of pay applicable to him. For this purpose, the petitioner relied on the pay granted to one Periasami, who had also approached the Tribunal by way of O.A. No.1135 of 1996 and which application stood allowed and according to which, the said Periasami was being granted pay in the scale of pay of Rs.1320-2 040. The contention of the petitioner therein was that Periasami though was working as Motorpump Mechanic Grade-II, he was in the same grade as that of the petitioner and, therefore, the petitioner was also entitled to draw the pay in the scale of pay of Rs.1320-2040. This original application, O.A. No.1103 of 1996, was allowed by the Tribunal on 8-2-1999 against which, the Railway Administration has come in the second mentioned writ petition.

4. While all this was in progress, the petitioner came to be regularised by the order dated 26-3-1997. However, that regularisation was not in the Group-C post, in which the petitioner was throughout working, but

in the Group D post of khalasi. The scale of pay of which then was Rs.750-940, which was subsequently revised to Rs.800-1150. The petitioner immediately approached the Tribunal by way of original application, O.A. No.483 of 1997, which was resisted by the Railway Administration. In the said original application, the petitioner's first prayer was that he could not be regularised as khalasi and more particularly in Group D post because at the time when he was regularised, he was working, right from 1-1-1984, in the Group C post of Wiremen Grade-II or as the case may be Wiremen Grade-I. His second prayer was that his salary should be fixed in the scale of pay applicable to the Wiremen Grade-I and more particularly Group C post having the scale of pay of Rs.1320-2040, which is now commensurate to Rs.3050-45 90. The Tribunal has dismissed this original application taking the view that the appointment to Group C post cannot be made directly because essentially Group C posts are promotional posts.

5. It is not disputed before us that the Group-C posts are promotional posts. It is also not disputed before us that Group-C consists of three Grades, viz. Artisans (Skilled); Artisans (Highly Skilled) Grade II; and Artisans (Highly Skilled) Grade I. The scale of pay, for which the petitioner has prayed, of Rs.1320-2040 is applicable only to the Artisans (Highly Skilled) Grade I. It is also not disputed before us that in order to be promoted from the post of a skilled employee to the post of even Artisans (Highly Skilled) Grade II, there is a Trade Test. For further promotion to the post of Artisans (Highly Skilled) Grade I also there is a Trade Test. It is also not in dispute that those two Trade Tests have not been so far passed by the petitioner.

6. The Tribunal took the view, basing its judgment on the reported decision of the Supreme Court in Union of India v. Motilal (1996) 7 SCC 481 that there could be no right in any employee, while being made permanent, of being offered the same post in the same Group in which he was serving earlier. In that case, the question of conferment of 'permanent status' directly fell before the Supreme Court and the Supreme Court took the view that Group C posts, for which the petitioner is now vying, are also the promotional posts. Undoubtedly, the Supreme Court in that case gave a direction in favour of the employees that since they were working in the Group-C posts continuously for twenty years, they should not be disturbed but, it has specifically held in paragraph 13 that this direction should not be treated as a precedent meaning thereby, that the law was crystallised by the Supreme Court in the earlier paragraphs by holding that it is not permissible under the rules to appoint a person directly in the Group, which came under Class III (Group C posts), and even a factual continuance of the persons in that posts would not confer any right on them for being permanently absorbed in that posts. Once this position is clear, there could be no escape from the consequences that the petitioner would not be able to claim his permanent absorption in Group C post, which, admittedly, is a promotional post. It is obvious that though the petitioner had in the beginning refused to accept the

permanent absorption in Group D post, later on has accepted to be permanently absorbed in Group D post. That would also speak against the petitioner's stand taken now or as the case may be before the Tribunal. In that view, we are bound by the judgment of the Supreme Court in Motilal case, cited supra, and would, therefore, choose to confirm the order of the Tribunal in O.A. No.483 of 1997 in which the main prayer of the petitioner was for the absorption in Group C post of the Wiremen Grade I. For the same reason, we would also not accept the second prayer made in that original application of fixing him in the scale of pay of Rs.1320-2040, which is now commensurate to Rs.3050-4590. The first writ petition, W.P. No.20553 of 2000 is,s therefore, dismissed.

7. In so far as the second writ petition, W.P. No.18729 of 1999, is concerned, Shri V. Radhakrishnan, learned standing counsel for the Railway Administration, points out that the only reason for allowing the original application, O.A. No.1103 of 1996, by the Tribunal was the so-called principle of "equal work-equal pay". Learned counsel points out that that principle could not be made applicable directly because Periasamy was not working as a Wireman. He was working as Motor Mechanic Grade II. The mere fact that he was working in the same group would be of no consequence if the claim were to be based on the principle of "equal work equal pay". Learned counsel further points out that the scale of pay of Rs.1320-2040 was available to the Artisans (Highly Skilled) Grade I and at no point of time, was the petitioner ever in that post. He was undoubtedly working as Wiremen Grade I or at least that was the nomenclature, according to the learned counsel, of his post. However, the learned counsel was at pains to point out that even factually, it was disputed before the Tribunal that the petitioner had never worked as Wiremen. He was, althrough in the construction department, continuing in the post, the nomenclature of which was Wiremen Grade-II or as the case may be Wiremen Grade-I. According to the learned counsel, the pay sought for by the petitioner was that of the pay applicable to Artisans (Highly Skilled) Grade I and it was an admitted position that even today, the petitioner is not Artisan (Highly Skilled) Grade I because he has not been promoted from his previous post as Artisan (Skilled) to Artisan (Highly Skilled) Grade-II first and to Grade-I later on. In that view, the learned counsel points out that the Tribunal merely went on its own judgment in O.A. No.1135 of 1996. Learned counsel points out that though the Tribunal felt bound by that judgment of itself, the judgment is all the same not binding on this Court. Learned counsel is undoubtedly correct in his submissions. If the scale of pay of Rs.1320-2040 was not applicable to the post and was applicable only to the post of Artisan (Highly Skilled) Grade-I, in which post the petitioner admittedly was not working, then, there would be no question of granting that scale of pay to him.

8. We are told at the Bar that though the petitioner has been made permanent in Group D post, the scale of pay of which would be Rs.750 -940, yet, the earlier scale of pay granted to the petitioner of Rs.9 50-1500 is still being given to the petitioner. We have no reason to dispute this statement made at the Bar by the learned counsel. Mr. Radhakrishnan,

however, has not accepted the statement. According to him, he does not have instructions as to what is the present scale of pay at which the petitioner is being paid. However, we need not go into that question because that is not the question pending before us. If at all the petitioner is being paid the salary in the scale of pay of Rs.950-1500, it is obvious that his pay has been protected as was done in Motilal's case, cited supra, which is clear from the observations of the Supreme Court in paragraph 4 of the judgment. But that need not detain us. In short, we are of the clear opinion that the Tribunal has erred in granting the direction of fixing the petitioner's pay in the scale of pay of Rs.1320-2040 instead of Rs.950-1500 which was granted to him. We would, therefore, choose to allow the writ petition, W.P. No.18729 of 1999. However, that will be without costs.

9. In the result, W.P. No.20553 of 2000 is dismissed Rule is discharged. W.P. No.18729 of 1999 is allowed and the Rule is made absolute. Under the circumstances, there shall be no orders as to the costs.

Index:Yes
Website:Yes
Jai

To:

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2. The Chief Personnel Officer
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